

IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH '(D)', KOLKATA  
[Before Shri P.M. Jagtap, Vice President (KZ) & Shri A. T. Varkey, JM]

[Through Virtual Court]

I.T.A. No. 165/Kol/2020]

*Action Barter Pvt. Ltd.*.....*Appellant*  
*3A, Chowringhee Lane,*  
*Kolkata - 700069.*  
*[PAN: AAHCA 5884 A]*

Vs

*ITO, Ward - 3(1), Kolkata*.....*Respondent*  
*P-7, Chowringhee Square,*  
*Kolkata - 700 069.*

**Appearances by:**

*Shri Subash Agarwal, Advocate appearing on behalf of the Assessee.*

*Shri Jayanta Khanra, JCIT appearing on behalf of the Revenue.*

Date of concluding the hearing : June 30, 2020

Date of pronouncing the order : June 30, 2020

**ORDER**

**PER P.M. JAGTAP, VICE-PRESIDENT (KZ)**

This appeal filed by the assessee is directed against the order of Ld. CIT(Appeals) - 4, Kolkata dated 29.11.2019 passed ex-parte whereby he dismissed the appeal of the assessee for non-prosecution.

2. The assessee in the present case is a company which filed its return of income for the year under consideration originally on 23.09.2011 declaring a total income of Rs. 811/-. The said return was initially processed by the AO u/s 143(1) of the Act on 30.04.2012. The assessment however was subsequently reopened by him on the basis of the information received from DDIT (Inv.), Kolkata that the assessee company was one of the beneficiaries of the bogus accommodation entries received from M/s. Piyush Trading and M/s. Ajoy Trading Co. A notice u/s 148 accordingly was issued by the AO

on 26.03.2018 in response to which the return of income was filed by the assessee company on 15.11.2018. Thereafter, a notice u/s 143(2) was issued by the AO, but there was no satisfactory compliance on the part of the assessee to the said notice as well as the notices issued by the AO u/s 142(1) of the Act. The directors of the assessee company also failed to appear before the AO in response to the summons issued u/s 131 of the Act. A written submission however filed by the assessee company claiming that the alleged accommodation entries represented consideration of unquoted shares of M/s. Satyataj Vyapaar Pvt. Ltd. sold to M/s. Piyush Trading and M/s. Ajoy Trading Co. The assessee company failed to establish the creditworthiness of M/s. Piyush Trading and M/s. Ajoy Trading Co. as well as genuineness of the relevant transactions involving the so-called sale of unquoted shares of M/s. Satyataj Vyapaar Pvt. Ltd to the said parties. On the basis of information received from the DDIT (Inv.), Kolkata, the AO also arrived at the conclusion that the said two parties were having no real existence and business activities and they were involved in providing accommodation entries in the form of pre-arranged bogus capital gain. He accordingly treated the entire amount of Rs. 65,38,000/- received by the assessee from the said two parties during the year under consideration as unexplained cash credit and addition to that extent was made by him to the total income of the assessee u/s 68 in the assessment completed u/s 143(3)/147 of the Act vide an order dated 24.12.2018.

3. Against the order passed by the AO u/s 143(3)/147, an appeal was preferred by the assessee before the Ld. CIT(A) and since there was no satisfactory compliance on the part of the assessee to the

notices issued by him fixing the said appeal for hearing from time to time, the Ld. CIT(A) dismissed the appeal of the assessee for non-prosecution vide his appellate order dated 26.11.2019 passed ex-parte. Aggrieved by the order of the Ld. CIT(A), the assessee has preferred this appeal before the Tribunal.

4. We have heard the arguments of both the sides and also perused the relevant material available on record. In support of the preliminary issue raised by the assessee in this appeal challenging the impugned order passed by the Ld. CIT(A) ex-parte, the learned counsel for the assessee has submitted that the assessee had sought adjournment of hearings initially fixed by the Ld. CIT(A) on 27.09.2019 and 18.10.2019. He has submitted that the appeal of the assessee thereafter was fixed for hearing by the Ld. CIT(A) on 05.11.2019 and 29.11.2019. He has submitted that the authorised representative of the assessee however was out of station during this relevant period and he, therefore, could not attend the said hearings fixed on 05.11.2019 and 29.11.2019 and even the ld. DR has not raised any material contention to dispute this position. It is thus clear that the appeal of the assessee was dismissed by the Ld. CIT(A) vide his impugned order passed ex-parte without giving proper and sufficient opportunity of being heard to the assessee and there is a clear violation of principle of natural justice. Moreover, as per the provisions of sub-section (6) of section 250, the Ld. CIT(A) was required to dispose of the appeal of the assessee vide an order in writing stating the points for determination, the decision thereon and the reasons for the decision. It is observed that the impugned order passed by the Ld. CIT(A) does not comply with these requirements. We, therefore,

consider it fair and proper and in the interest of justice to set aside the impugned order passed by the Ld. CIT(A) dismissing the appeal of the assessee for non-prosecution and remit the matter back to him for disposing of the appeal of the assessee afresh on merit in accordance with law after giving proper and sufficient opportunity of being heard to the assessee. As undertaken by the learned counsel for the assessee, the assessee shall make due compliance before the Ld. CIT(A) and shall extend all the possible cooperation in order to enable the Ld. CIT(A) to dispose of the appeal expeditiously.

**5. In the result, the appeal of the assessee is treated as allowed for statistical purpose.**

Order Pronounced in the Open Court on 30<sup>th</sup> June, 2020.

Sd/-  
(A.T. Varkey)  
JUDICIAL MEMBER

Sd/-  
(P.M. JAGTAP)  
VICE PRESIDENT

**Dated: 30/06/2020**  
Biswajit, Sr. PS

Copy of order forwarded to:

1. Action Barter Pvt. Ltd., 3A, Chowringhee Lane, Kolkata – 700 069.
2. ITO, Ward – 3(1), Kolkata.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Assistant Registrar / H.O.O.  
ITAT, Kolkata